No. 15-674

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

STATE OF TEXAS, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR AMICI CURIAE THE MAYORS OF NEW YORK, LOS ANGELES, ATLANTA, AUSTIN, BIRMINGHAM, 113 ADDITIONAL MAYORS, COUNTY EXECUTIVES, AND LOCALITIES, THE UNITED STATES CONFERENCE OF MAYORS, AND THE NATIONAL LEAGUE OF CITIES IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE 1

SUMMARY OF THE ARGUMENT 4

ARGUMENT 6

I. The Guidance Protects Longstanding Local Interests, and Enjoining the Guidance Imposes Immediate Harms on Localities. 6

II. A Single Plaintiff's Claim of Future Administrative Costs Does Not Support Standing for a Nationwide Injunction that Inflicts Widespread Local Harms 18

CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

Cases

Clapper v. Amnesty Int'l USA,
133 S. Ct. 1138 (2013) 27

DaimlerChrysler Corp. v. Cuno,
547 U.S. 332 (2006) 20

Davis v. FEC,
554 U.S. 724 (2008) 27

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,
528 U.S. 167 (2000) 20

Massachusetts v. EPA,
549 U.S. 497 (2007) 25

Monsanto Co. v. Geertson Seed Farms,
561 U.S. 139 (2010) 19

Salazar v. Buono,
559 U.S. 700 (2010) 20

United States v. Mendoza,
464 U.S. 154 (1984) 29

Weinberger v. Romero-Barcelo,
456 U.S. 305 (1982) 5, 20

Winter v. NRDC, Inc.,
555 U.S. 7 (2008) 5, 20

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USA PATRIOT Act of 2001, Pub. L. No.
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Lisa Christensen Gee et al., *Undocumented Immigrants' State & Local Tax Contributions*, The Inst. of Taxation & Economic Policy (Feb. 24, 2016) 6, 16, 22, 23

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Los Angeles City Attorney, *Fighting Wage Theft*, http://bit.ly/21bTAe0 (last visited Mar. 4, 2016) 14

Marie Price, *Cities Welcoming Immigrants: Local Strategies to Attract and Retain Immigrants in U.S. Metropolitan Areas*, International Organization for Migration (Dec. 2014) 13

Marvine Howe, *I.N.S. Ruling Benefits Illegal Immigrant Children*, N.Y. Times, Mar. 26, 1988 8

Marvine Howe, *The Region: Under the New Law, Illegal Aliens Suffer Much in Silence*, N.Y. Times, Nov. 27, 1988 18

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Opening Minds, Opening Doors, Opening Communities: Cities Leading for Immigrant Integration, USC Dornsife Center for the Study of Immigrant Integration (Dec. 15, 2015) 12, 13

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Pew Charitable Trusts, *Immigration and Legalization: Roles and Responsibilities of States and Localities* (Apr. 2014) 8, 11

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Ruth Milkman et al., *Wage Theft and Workplace Violations in Los Angeles*, UCLA Institute for Research on Labor and Employment (2014) 14

USCIS, *Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina: Frequently Asked Questions (FAQ)* (Nov. 25, 2005) 10

INTEREST OF AMICI CURIAE[1]

Amici represent a broad coalition of local governments. One hundred and eighteen cities, counties, and local government officials have joined this brief as well as The U.S. Conference of Mayors, a nonpartisan group representing mayors of over 1,400 cities, and the National League of Cities, which represents more than 19,000 municipal governments nationwide.

Amici are home to some of the largest immigrant communities in the United States. More than 1.5 million children and parents potentially eligible for relief under the enjoined executive guidance live in our cities and towns. Amici submit this brief to explain why the nationwide injunction in this case—and the novel theory of standing asserted to support it—improperly ignores the irreparable harm to our residents from denying humanitarian deferred action relief.

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to this brief's preparation or submission. All counsel of record provided blanket consent for the filing of amicus briefs or received timely notice and consented to the filing of this brief.

As amici have explained at every stage of this litigation: because undocumented immigrants are integral members of our communities, the enjoined deferred action programs protect vital local interests. Without the guidance, millions of families in our cities and counties face the threat of deportation, destabilizing our communities and jeopardizing the welfare of families and children. The nationwide injunction also undermines the ability of amici's police departments to protect and serve all of our residents. Finally, the injunction imposes extensive economic harm on amici. Undocumented immigrants currently contribute hundreds of millions of dollars in tax revenues and other economic benefits to local communities every year. The deferred action programs will contribute over $800 million in additional economic benefits to state and local governments annually. New York City alone loses an estimated $100,000 in tax revenue each day the injunction remains in place.

Amici represent a diverse array of local interests, but are united in making one point: the impact of the injunction is most immediately and acutely felt on the local level. Yet the nationwide injunction in this case was issued without *any court* considering local harms or weighing local harms against the narrow standing "injury" established by plaintiffs: a claim by Texas, a single plaintiff state, of increased driver's license processing costs.

The courts below never considered local harms within plaintiff states, let alone local harms

nationwide. Forty-four amici are located in plaintiff states or states that have joined amicus briefs supporting plaintiffs. For example, amici include Dallas County, Travis County, and El Paso County, as well as Austin, Houston, Brownsville, and Edinburg, local governments that collectively represent over twenty-six percent of Texas's population. Other amici located outside plaintiff states represent over 42 million local residents. The interests of *all* of amici's residents were ignored by the courts below in authorizing a nationwide injunction.

If the role of local governments is to be respected, courts must ensure that the core requirements of standing are satisfied before the issuance of a nationwide injunction harming longstanding local interests. Amici submit this brief to explain the local impact of federal immigration measures, and to point out the legal and practical problems in issuing a nationwide injunction without considering the nationwide harms to local governments and their residents.

SUMMARY OF THE ARGUMENT

This brief addresses the first question in the petition: whether plaintiff states have standing to bring this action. Amici local governments focus on an important element of standing: plaintiffs' proof of standing for each form of relief sought. Here, several factors demonstrate why plaintiffs' claim of standing to obtain a nationwide injunction is overbroad.

1. Immigration measures, like the guidance in this case, directly implicate significant local interests. For this reason, local governments have been active for decades in supporting deferred action and taking other steps to protect immigrant residents and their families. Federal humanitarian actions to defer deportation for law-abiding local residents, particularly parents and children, have far-reaching social and financial benefits for localities. Withholding and delaying deferred action, by contrast, threatens irreparable local harms for all of amici's residents.

2. Despite the significant local impact, no court below considered local harms, including whether local harms vastly exceed the sole standing injury proven by Texas, before enjoining the guidance nationwide. No decision of this Court upholds such a sweeping standing theory. To the contrary, this Court has made clear that a party seeking a preliminary injunction must establish irreparable harm and "that an injunction is in the public

interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). Requiring plaintiffs to establish standing injury sufficient to justify the geographic scope of judicial relief honors this Court's warning that courts must weigh "competing claims of injury" and ensure that plaintiffs are not seeking overbroad relief before issuing an injunction. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

3. But here the lower courts did not weigh competing claims of harm, because they treated plaintiff states' projections about increased driver's license administration costs—solely in Texas—as overriding tens of millions of dollars of lost revenue and extensive social and law enforcement harms for local governments in Texas and in other states.

4. This Court should not authorize a standing rule for nationwide injunctions that effectively gives objecting parties the right to veto federal policies in every locality in the country, while disregarding the harm to thousands of local governments across the nation. That overbroad concept of standing would invite parties to litigate over political disputes and settle important public questions, as in this case, by strategic litigation and sweeping injunctions that bear little relation to the narrow harms asserted.

ARGUMENT

I. The Guidance Protects Longstanding Local Interests, and Enjoining the Guidance Imposes Immediate Harms on Localities.

Amici's support for the enjoined guidance is based on decades of experience and longstanding local efforts to protect our immigrant residents and families. As amici have emphasized at every stage of this litigation,[2] the guidance protects undocumented immigrants who are important contributors to our cities and towns.[3] By denying important humanitarian relief to millions of our residents, the injunction strikes at the heart of our

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[2] *See* Br. for Amici Curiae the Mayors of New York, Los Angeles, Atlanta, and Eighty-One Additional Mayors *et al.* in Support of Petition for a Writ of Certiorari at 6-18 (No. 15-674); Br. for Amici Curiae the Mayors of New York and Los Angeles and Seventy-One Additional Mayors *et al.* in Support of Appellants at 10-28, No. 15-40238 (5th Cir. Apr. 6, 2015); Br. for Amici Curiae the Mayors of New York and Los Angeles and Thirty-One Additional Mayors *et al.* in Opposition to Plaintiffs' Motion for Preliminary Injunction at 6-15, No. 14-cv-254 (S.D. Tex. Jan. 27, 2015), ECF No. 121.

[3] In New York State alone, undocumented immigrants pay an estimated $1.1 billion in state and local taxes per year—supporting public services for all residents regardless of their immigration status. *See* Lisa Christensen Gee *et al.*, *Undocumented Immigrants' State & Local Tax Contributions*, The Inst. of Taxation & Economic Policy, 3 (Feb. 24, 2016), http://bit.ly/21rPuAd.

communities. The injunction imposes immediate harms on all local residents by threatening public health and safety, destabilizing families, and harming the social and economic well-being of our communities as a whole.

1. Local governments have long recognized that promoting the integration of immigrant residents is essential to the success of local communities, and that lack of integration imposes significant local harm. The depth of local concern in this area is demonstrated by local governments' decades-long investment in both federal and local policies that advance immigrant integration. This investment reaches back to local support for the legalization provisions of the 1986 Immigration Relief and Control Act (IRCA), with the Los Angeles County supervisor testifying before Congress that legalization would promote integration and allow undocumented immigrants to become productive members of the community.[4] Local governments—although not required to do so—played a key role in

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[4] *Immigration Reform and Control Act of 1982: Joint Hearings Before the Subcomm. on Immigration, Refugees, and International Law of the S. Comm. on the Judiciary*, 97th Cong. 438 (1982) (statement of Deane Dana, Supervisor, Los Angeles County).

implementing the IRCA legalization program, raising application rates in their communities.[5]

Following IRCA's passage, local leaders and representatives lobbied for deferred action policies, later enacted into law, to address the social and humanitarian cost of "split-eligibility families": families where some members had legal status and others lived under the threat of deportation.[6] In 1988, local pressure, prompted by humanitarian concerns, led to a change in regulations to allow undocumented immigrant children in foster care to qualify for legal status under IRCA.[7]

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[5] *See* Pew Charitable Trusts, *Immigration and Legalization: Roles and Responsibilities of States and Localities*, 12 (Apr. 2014), http://bit.ly/1TvNKVX.

[6] *Implementation of Immigration Reform: Hearing Before the Subcomm. on Immigration and Refugee Affairs of the S. Comm. on the Judiciary*, 100th Cong. 190 (1988) (statement of Edward I. Koch, Mayor, City of New York); *Continuing Oversight of the Immigration Reform and Control Act of 1986: Hearing Before the Subcomm. on Immigration, Refugees, and Int'l Law, H. Comm. on the Judiciary*, 100th Cong. 111-115 (1987) (statements of Rep. Hamilton Fish, Jr.. and Rep. Howard L. Berman, Members, Subcomm. on Immigration, Refugees, and Int'l Law).

[7] Marvine Howe, *I.N.S. Ruling Benefits Illegal Immigrant Children*, N.Y. Times, Mar. 26, 1988; *see also Amendments to the Immigration Reform and Control Act of 1986: Hearing Before the Subcomm. on Immigration, Refugees, and Int'l Law of the H. Comm. on the Judiciary*, 101st Cong. 146-159 (1989)

2. In the years surrounding IRCA, localities also responded to their residents' fears of political strife and persecution in their home countries by supporting other federal deferred action programs. For example, congressional representatives and local government leaders from Los Angeles and Miami—centers of immigration from Ethiopia and Haiti, respectively—supported deferred action programs in the 1980s and 1990s for those groups.[8] At least twelve municipalities officially gave their support to federal deferred action for Salvadoran and Guatemalan refugees in the 1980s.[9] More recently, deferred action programs have provided humanitarian relief to individuals affected by regional disasters in the United States, such as

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(Statements of John E. Oppenheim, Asst. Dir. for Finance and Administration, Dep't of Social Services, Santa Clara County, and Carlos M. Sosa, Asst. Dir., Dep't of Children's Services of Los Angeles County).

[8] Bernard Weinraub, *State Dept. Reverses Policy on Ethiopian Exiles in U.S.*, N.Y. Times, July 7, 1982; Eric Schmitt, *Clinton Expected to Spare Haitians from Deportation*, N.Y. Times, Dec. 17, 1997; *Haitian Detention and Interdiction: Hearing Before the Subcomm. on Immigration, Refugees, and Int'l Law of the H. Comm. on the Judiciary*, 101st Cong. 79-81 (1989) (Statement of Barbara Carey, Commissioner, Dade County, Miami).

[9] Jorge L. Carro, *Municipal and State Sanctuary Declarations: Innocuous Symbolism or Improper Dictates?*, 16 Pepp. L. Rev. 297, 311 (1989).

Hurricane Katrina and the September 11 terrorist attacks.[10]

3. Underscoring the strength of local interest in this area, localities have voluntarily embraced their role in federal relief programs for undocumented victims of crime. For example, the U and T visa programs, created in 2000, allow victims of crimes such as domestic violence and human trafficking to receive temporary status if they cooperate with law enforcement investigations.[11] These programs address local interests by encouraging victims to come forward and cooperate with law enforcement. In turn, to increase trust and collaboration between localities and immigrant communities, many local police departments, prosecutors' offices, family protective services, and other agencies have chosen to invest resources towards identifying potential

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[10] USCIS, *Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina: Frequently Asked Questions (FAQ)* at 1 (Nov. 25, 2005), http://1.usa.gov/1TvO0Eq; USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 423(b), 115 Stat. 272, 361.

[11] Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, 4, 9 (Jan. 4, 2016), http://1.usa.gov/21Nu5Sm.

applicants and providing them with documentation to bolster their applications for federal relief.[12]

4. Localities continued their frontline implementation role during the 2012 Deferred Action for Childhood Arrivals (DACA) initiative. New York City budgeted $18 million for education, outreach, and legal service programs to encourage local residents to apply for relief.[13] School districts in cities including San Diego, California; Des Moines, Iowa; and Yakima, Washington added staff and offices and created new databases and systems to facilitate record requests.[14] Immigrant affairs offices held public application workshops, and in Los Angeles, the mayor re-established the dormant Office of Immigrant Affairs in part to assist applicants.[15] Mayors' offices across the country

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[12] *Id.* at 3; Press Release, New York City Office of the Mayor, Mayor de Blasio Announces NYC Commission of Human Rights First Such Agency in Major U.S. City to Issue U and T Visa Certifications (Feb. 9, 2016), http://on.nyc.gov/1Qqptwy.

[13] Press Release, The Council of the City of New York, Speaker Quinn, New York City Council Members, Bloomberg Administration and Advocates Announce Funding to Provide New Yorkers Immigration Relief (July 17, 2013), http://on.nyc.gov/1L7mWIE.

[14] Pew Charitable Trusts, *supra* note 5 at 15.

[15] Audrey Singer *et al.*, *Metropolitan Policy Program at Brookings, Local Insights From DACA for Implementing Future Programs for Unauthorized Immigrants* 10, 14 (June 2015), http://brook.gs/1nlvK1O.

facilitated access to public documents that applicants would need; partnered with public libraries to hold outreach sessions; and ensured that residents were not misled by cracking down on unqualified individuals offering fraudulent legal services to immigrants.[16]

5. In addition to supporting federal immigration relief programs, localities have also implemented innovative local policies to promote immigrant integration. There are currently sixty-three offices promoting immigrant integration at the municipal level across the country, and those numbers are growing.[17] Starting in the 1980s, cities including New York, Chicago, Albuquerque, and Austin have mandated that local services be provided to residents regardless of immigration status, based on local leaders' experience that public welfare requires all residents to have access to education, health, and police protection services.[18] Policy

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[16] Rebecca S. Carson, *Ready or Not? Gauging Midwest Preparations for Executive Action on Immigration*, The Chicago Council on Global Affairs, 8 (Mar. 2015), http://bit.ly/1p4Q61c.

[17] *Opening Minds, Opening Doors, Opening Communities: Cities Leading for Immigrant Integration*, USC Dornsife Center for the Study of Immigrant Integration, 5 (Dec. 15, 2015), http://bit.ly/1Qy7diq.

[18] City of Chicago, Office of New Americans, *Chicago New Americans Plan: Building a Thriving and Welcoming City*, 33 (Dec. 2012), http://bit.ly/1OVg5gf; New York City Exec. Order

innovations like municipal identification cards—established by at least seventeen localities, from Los Angeles to Milwaukee County, Wisconsin—further expand access to local services.[19] Other localities have launched health care programs for undocumented residents.[20] To build trust between law enforcement and immigrant communities, police departments from metropolitan centers and smaller cities have introduced immigration status confidentiality policies, special hotlines, and community education programs.[21] Local officials

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No. 124 (Aug. 7, 1989); New York City Exec. Order No. 34 (May 13, 2003); City of Albuquerque Resolution No. 2004-070 (June 7, 2004); City of Austin Resolution (Jan. 30, 1997).

[19] Nat'l Immigration Law Center, *Immigration-inclusive State and Local Policies Move Ahead in 2014-15*, Nat'l Immigration Law Center, 14-15 (Dec. 2015), http://bit.ly/1QXSRh0.

[20] *Id.* at 13 (describing programs in California counties that provide health services to undocumented immigrants and a pilot program in New York City to use public and private funds to insure a mostly undocumented group).

[21] *See, e.g.*, *Opening Minds, Opening Doors, Opening Communities*, *supra* note 17 at 28 (describing strategies to build trust between police and immigrant communities in Tucson, Arizona; Boston, Massachusetts; and Norcross, Georgia); Marie Price, *Cities Welcoming Immigrants: Local Strategies to Attract and Retain Immigrants in U.S. Metropolitan Areas*, International Organization for Migration, 13 (Dec. 2014), http://bit.ly/1QXT5EV (describing New York City Police Department's multilingual outreach program); Austin Police Department, *Robbery Prevention & Immigrant Outreach (Hispanic)*, http://bit.ly/1RMG1za (last visited Mar.

have also prosecuted employers who engage in wage theft and other abuses towards undocumented workers.[22]

6. The 2014 executive guidance protects these well-established local interests. The guidance extends humanitarian relief to the same category of "split-eligibility families" that local leaders had long sought relief for. And by offering deferred action relief to an estimated 3.8 million local residents, the guidance helps promote local governments' existing integration efforts.

Because the impact of the guidance is most immediate at the local level, local governments provided early and extensive support for its implementation. New York City has committed almost $8 million to prepare legal aid providers and

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4, 2016); New Orleans Police Department, Operations Manual, *Chapter 41.6.1, Immigration Status* (effective Feb. 28, 2016), available at: http://bit.ly/1p4QJrA.

[22] *See* Ruth Milkman *et al.*, *Wage Theft and Workplace Violations in Los Angeles*, UCLA Institute for Research on Labor and Employment, 58 (2014), http://bit.ly/1p4R65F. For example, in 2014, the Los Angeles City Attorney's Office prosecuted employers for failing to pay more than 50 employees approximately $250,000 in wages and overtime. As a result of this suit, Los Angeles created a hotline to assist residents victimized by wage theft. *See* Los Angeles City Attorney, *Fighting Wage Theft*, http://bit.ly/21bTAe0 (last visited Mar. 4, 2016).

community groups for implementation of the guidance.[23] Los Angeles raised $4 million for its 2015 campaign to help Los Angeles residents apply for deferred action.[24] From Houston to Indianapolis to Boston and beyond, localities have convened stakeholders to make plans, provide information to immigrant residents, and ensure access to quality legal services to help residents with their applications.[25] Indeed, weeks after the 2014 guidance was announced, a national coalition of mayors and county leaders came together to support the guidance and share best practices for implementation. This coalition now includes over 100 mayors and county leaders.[26]

7. Given the local interests at stake, local governments have also made an extraordinary

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[23] Liz Robbins, *New York to Aid Immigrants Amid Stalled National Reforms*, N.Y. Times, Dec. 14, 2015.

[24] Press Release, Mayor of Los Angeles, Mayor Garcetti Announces Nationwide Actions as Court Hearings Proceed on Obama's Immigration Reforms (Apr. 17, 2015), http://bit.ly/1p4Rp0a.

[25] Houston Immigrant Legal Services Collaborative, http://www.citizenshipcorner.org (last visited Mar. 4, 2016); Carson, *supra* note 16 at 8; City of Boston, Mayor's Office of New Bostonians, http://bit.ly/1Gfh22A (last visited Mar. 4, 2016).

[26] Cities for Action, http://bit.ly/1QyRqzY (last visited Mar. 4, 2016).

effort to inform the courts below why a nationwide injunction should not issue. Amici have filed amicus briefs at every stage of this litigation explaining why a nationwide injunction blocking implementation of the guidance imposes immediate harms on amici's residents.

As amici have explained, the injunction harms local economies. Preventing residents from working legally deprives localities of tax revenue, keeps families in poverty, and leaves undocumented residents vulnerable to employer exploitation and abuse. The guidance is estimated to increase the income of families with at least one eligible parent by about ten percent.[27] Nationwide, it is estimated that the 2012 and 2014 deferred-action initiatives would increase state and local tax contributions by $805 million per year—$59 million for Texas alone.[28] The injunction costs local governments hundreds of thousands of dollars each day it remains in effect.

Amici have also explained that the injunction imposes irreparable social harms. The enjoined guidance protects children and parents,

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[27] Randy Capps *et al.*, *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, Migration Policy Institute, 17 (Feb. 2016), http://bit.ly/1UNlHQR.

[28] Gee, *supra* note 3 at 5.

undocumented immigrants with family connections to the United States and local communities.[29] Withholding deferred action places millions of families in our cities and counties at economic and personal risk—unable to legally support their families and afraid and reluctant to go to the police, seek health care, or take advantage of government services to aid themselves and their children, for fear of revealing the undocumented status of a family member. These harms extend beyond the potential applicants themselves: children of undocumented parents (including many children who are citizens of this country) suffer ongoing social and psychological harms due to fear of separation from parents, siblings, and other loved ones.[30] And the safety of all residents is threatened

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[29] Capps, *supra* note 27 at 5, 7 (noting that more than two-thirds of parents potentially eligible for relief under the guidance have lived in the United States for at least ten years, and eighty-five percent of their minor children are U.S. citizens).

[30] *See* Max Ehrenfruend, *How having an undocumented parent hurts American children*, Wash. Post, Mar. 4, 2015; Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities*, Center for American Progress, 9 (Aug. 2012), http://ampr.gs/1nlxCrC; Capps, *supra* note 27 at 19-20.

when community members are afraid to seek help from the police.[31]

Amici rely on the contribution of all residents, and harm to any significant portion of our residents and families affects the wider community. As a New York City official recognized almost thirty years ago: "If some New Yorkers are ill, poorly educated or easy victims of crime, all New Yorkers suffer. We cannot write off our undocumented aliens without great cost to ourselves."[32]

II. A Single Plaintiff's Claim of Future Administrative Costs Does Not Support Standing for a Nationwide Injunction that Inflicts Widespread Local Harms

The longstanding local interests implicated by deferred action relief inform the standing question before the Court. Standing requirements are not technical doctrines. One of their core purposes is to assure that plaintiffs are not using federal courts as instruments of partisan political battles, short-

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[31] *See Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims, Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (July 21, 2015) (statement of Tom Manger, Major Cities Chiefs Association), available at http://bit.ly/1LESmpB.

[32] Marvine Howe, *The Region: Under the New Law, Illegal Aliens Suffer Much in Silence*, N.Y. Times, Nov. 27, 1988.

circuiting consideration of the public interest in enjoining government action. Here, the courts below failed to ensure that plaintiffs' proven standing injury justified an expansive nationwide injunction. That standing error had profound practical consequences for amici. It meant that no court below considered the harms to local communities and local residents before issuing an injunction binding in amici's home jurisdictions.

1. Here, although twenty-six states filed suit, the district court concluded that plaintiffs had established only one concrete form of injury:[33] that Texas would allegedly incur "several million dollars" in future administrative costs, processing driver's license applications from residents who might qualify for deferred action under the guidance (Pet. App. 21a).[34]

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[33] The district court did not credit the other conclusory allegations of injury made by plaintiffs. Many of plaintiffs' alleged "injuries" in fact rested on unproven claims about increased *local* fiscal burden (Respondents' Br. in Opp. to Petition for a Writ of Certiorari at 12, 17 (No. 15-674)). But plaintiffs do not purport to represent local governments in their jurisdictions, and cannot "seek to enjoin" the 2014 guidance "on the ground that it might cause harm to other parties." *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010).

[34] The United States notes that Texas is claiming harm from a voluntary state subsidy because Texas could shift the cost of processing license applications to applicants (Pet'rs' Br. at

But this Court has made clear that "standing is not dispensed in gross," and, as a result, any injunctive relief must be tailored to "the injury in fact that the plaintiff has established." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006) (citation and quotation marks omitted). To justify the scope of the preliminary injunction, plaintiffs had to establish injury sufficient to enjoin the guidance *nationwide*. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (parties must establish standing for each form of relief sought, including standing to obtain an injunction).

2. Close attention to standing in the injunction context protects third parties, such as amici and their residents, *before* a broad injunction is imposed that harms absent parties. This Court has warned that courts must weigh competing claims of injury and protect the public interest before issuing an injunction. *See, e.g., Winter*, 555 U.S. at 20; *Weinberger*, 456 U.S. at 313. If these duties are not followed, there is a serious risk that overbroad injunctions will serve as "instrument[s] of wrong." *Salazar v. Buono*, 559 U.S. 700, 714-15 (2010) (citation and quotation marks omitted); *see also Weinberger*, 456 U.S. at 312 (warning courts to "pay

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26). Amici raise standing objections that would apply independently of any voluntary subsidy hurdle.

particular regard for the public consequences in employing the extraordinary remedy of injunction"). Standing is the starting point for these threshold inquiries. Courts cannot coherently tailor injunctions to avoid public harms unless the scope of relief a plaintiff is entitled to is clear from the outset.

At every stage of this litigation, amici local governments have endeavored to explain the extensive harms imposed and crucial benefits lost by enjoining the guidance in thousands of local communities across the nation. The theory of standing accepted by the lower courts, however, improperly ignored those interests—accepting a discrete and narrow claim of "injury" to a single plaintiff—as conferring standing to enjoin the guidance everywhere, regardless of harmful local impact. But the standing injury claimed does not match the expansive relief that was ordered.

Here, plaintiffs established only one form of alleged standing injury: that Texas may face additional administrative expenditures from increased driver's license applications if the 2014 guidance goes into effect. Plaintiffs did not even establish that the increased expenditures constituted "harm" or "injury" in the ordinary meaning of those terms. By granting work authorization and recognizing the economic contribution of longterm undocumented residents, the guidance provides hundreds of millions of dollars in economic benefits to states and

localities.[35] Plaintiffs did not disprove these benefits; they only claimed that the benefits were irrelevant even if Texas and other plaintiffs are net economic and fiscal beneficiaries under the guidance.

3. This concept of standing not only overlooks the lack of concrete financial injury to Texas, it also ignores the harms that a nationwide injunction imposes on localities. The courts below never evaluated why Texas's claim of increased administrative costs (solely in Texas) warranted enjoining the guidance across the United States. Failure to adhere to threshold standing requirements meant in effect that the real world concerns of millions of local residents were overlooked.

In contrast to Texas's narrow claim of injury from future expenditures, blocking implementation of the guidance imposes extensive local harms—all of which the courts below disregarded because they accepted that Texas had standing to enjoin the guidance nationwide:

- Local harms within Texas. Local governments within plaintiff states will suffer harm if the guidance is delayed. The

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[35] Gee, *supra* note 3 at 5.

2012 and 2014 deferred-action initiatives would likely lead to millions of increased local tax contributions—one estimate is that the state of Texas and its local governments could receive $59 million a year from the initiatives.[36] In fact, amici from Texas, representing 6.7 million Texas residents, oppose the preliminary injunction and confirm that the injunction will harm their residents, communities, and local governments.

- Local harms outside Texas. Likewise, while plaintiffs proved no harm *outside* of Texas, local governments and millions of local residents in other states are harmed by the preliminary injunction. As amici have explained, even if confined to financial impact alone, the financial harm to local governments in other states far exceeds Texas's claim of injury. New York City alone loses an estimated $35 million in tax revenue funds because the guidance is blocked for

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[36] *Id.*

New York City residents.[37] In Los Angeles County, undocumented immigrants eligible for deferred action to could see wage growth of a combined $1.6 billion during the life of the guidance, leading to an estimated $1.1 billion in new tax revenue between personal, sales, and business taxes.[38]

- Irreparable non-financial harms. Even more important, plaintiffs' standing theory rests on future financial expenditure alone. But monetary expenditure (particularly when offset by compensating economic benefits) generally does not qualify as irreparable harm. By contrast, amici have explained how the nationwide injunction imposes daily harms to amici's law enforcement and public safety efforts and how the threat of deportation and lack of legal status harms

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[37] *See* Br. for Amici Curiae the Mayors of New York, Los Angeles, Atlanta, *et al.* in Support of the Petition for a Writ of Certiorari at 15-18.

[38] Raul Hinojosa-Ojeda, *The Economic Benefits of Expanding the Dream: DAPA and DACA Impacts on Los Angeles and California*, UCLA North American Integration & Development Center, 1 (Jan. 26, 2015), http://bit.ly/1TeIxRL.

family stability and injures children. Those harms truly are irreparable; they cannot be undone even if the injunction is later lifted.

4. While the lower courts relied on *Massachusetts v. EPA*, 549 U.S. 497 (2007), that case did not address a nationwide injunction and does not bless plaintiffs' standing theory here. In *Massachusetts*, the only question was whether plaintiff states had standing to seek judicial review of a petition for agency rulemaking. The requested rulemaking did not impose any harm on absent individuals or local governments. Moreover, the asserted injury was loss of state territorial lands through climate change, a form of irreparable injury specific to states as sovereign entities.[39]

This case presents the opposite scenario: plaintiffs sought and obtained a nationwide injunction that imposes widespread harms on absent parties, including local governments and their residents. And the standing "injury" asserted, increased future expenditures, is neither unique to

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[39] This Court acknowledged "special solicitude" for states in assessing standing in this context only; nothing in the Court's decisions authorizes lower federal courts to *disregard* the interests of other parties, including other states and local governments, merely because a state acts as plaintiff. *Massachusetts*, 549 U.S. at 520.

states in their sovereign capacity nor clearly irreparable in scope.

5. The lower courts' analysis highlights the overbreadth in plaintiffs' standing theory. Like almost all government actions, the executive guidance balances short-term costs and long-term benefits—here, the benefits to local communities by allowing certain law-abiding and longstanding residents to apply for deferred action relief. It would be almost impossible to implement any beneficial government action, particularly action that aids and protects a large number of individuals, without *some party* having to make *some* future administrative expenditures.

The type of administrative costs that Texas asserts are common to any number of parties, including non-governmental parties like insurance companies, employers, and other businesses that might have to process additional applications or paperwork as a result of a challenged government guidance or action. It makes little sense to issue nationwide injunctions to parties who claim standing based on anticipated administrative costs without considering the public benefits associated with the challenged government action and without considering whether the plaintiff even suffers a net monetary loss.

The breadth of the standing theory in this case is compounded by the circuit majority's rationale for a nationwide injunction. The two-judge majority

justified a nationwide injunction by presuming that a geographically limited injunction would be ineffective because eligible beneficiaries of the executive guidance could potentially relocate to Texas from other areas (Pet. App. 89a). But freedom of travel is a basic fact of life in the United States. The potential for individuals to move to a particular location from other areas exists in almost any case.

If that potential alone authorized standing to obtain a nationwide injunction[40] notwithstanding widespread local harms elsewhere, local governments would be faced with an unworkable standing rule that placed the interests of their residents at risk. A fundamental trait of American life—unrestricted travel—would authorize nationwide injunctions as a matter of course in litigation challenging federal actions. The "migration" theory of nationwide injunctions also disregards the immediate effects of such injunctions on millions of individuals in their current communities. It disserves the public

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[40] Although this Court has required that threatened injury be "real, immediate, and direct" as well as "certainly impending" to support standing, *Davis v. FEC*, 554 U.S. 724, 734 (2008); *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1143 (2013), plaintiffs never proved that theorized migration into Texas was real and imminent, or even likely to increase the number of future driver's license applications, given the potential for simultaneous migration of individuals and families out of Texas.

interest to issue expansive relief based on the theoretical possibility of individuals relocating at some future point, while ignoring present-day harms to millions of local residents in the cities and counties where they reside *right now*.

6. Accepting such a broad standing theory also threatens to move generalized political disputes into federal courts, giving plaintiffs with narrow and confined injuries a mechanism to obtain nationwide injunctions. The most politically controversial subjects are also those most likely to affect the daily lives of individuals. Local governments are especially vulnerable because they provide frontline services and directly experience the impact when residents are deprived of essential services, protections, and remedies because of a judicial injunction.

Again, the core components of plaintiffs' claimed standing—projected future administrative costs plus the possibility of individuals traveling—could be asserted by a wide array of parties both public and private. Giving a single state (or a single party) standing to effectively veto federal action nationwide on such narrow proof of injury goes far beyond the existing standing principles recognized by this Court.[41]

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[41] Standing theories that readily allow single-court nationwide injunctions also place crucial public issues in the hands of one judge—countermanding this Court's caution that

7. Finally, if standing to obtain a nationwide injunction is upheld based on projected administrative expenditures plus the possibility of individuals traveling, a huge swath of federal actions with critical effects on local residents would be subject to sweeping injunctive challenges in almost any district court in the nation. From a practical perspective, in order to protect municipal interests, local authorities would have to track lawsuits around the country and seek to file amicus briefs, or even intervene, to ward off harmful injunctions in their home jurisdictions.[42]

City and county attorneys accustomed to practicing only in their local courts would have to appear in faraway federal courts and attempt to present evidence of local harms in litigation involving other parties. Very few municipal law offices have these capabilities, particularly for preliminary injunction proceedings as in this case,

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when government action is at stake, courts should not "thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

[42] By divorcing the scope of the injunction from proven injury, the standing theory in this case encourages plaintiffs to strategically forum shop and to deliberately choose courts in forums where the harms of a broad injunction will not be obvious or apparent, and where it will be difficult for adversely affected parties, like local governments, to appear.

which take place on an expedited timeframe. For all these reasons, devoting scarce resources to stave off overbroad injunctions in far-flung jurisdictions is impractical, if not impossible, for the vast majority of the amici cities and counties.

* * * *

In this case, no court below considered the harm to millions of people across thousands of local jurisdictions before issuing a nationwide injunction blocking the guidance. This Court should vacate the injunction because plaintiffs failed to establish standing to justify the scope of the injunction, or prove that the injunction served the public interest and was necessary to remedy cognizable harm to Texas.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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